

A Kamaruddin bin Sharif v Suruhanjaya Pasukan Polis & Anor

HIGH COURT (KUALA LUMPUR) — JUDICIAL REVIEW
NO WA-25-317-10 OF 2020

B AMARJEET SINGH J

30 JUNE 2023

C *Police — Disciplinary proceedings — Dismissal — Whether misconduct charges on which police officer was dismissed from service were baseless and/or defective — Whether procedures specified in Public Officers (Conduct and Discipline) Regulations 1993 were not followed to deal with the alleged misconduct — Whether failure to follow the procedures was fatal rendering the dismissal illegal and/or procedurally improper and hence invalid and null and void — Whether order dismissing officer had to be quashed — Whether officer was entitled to be compensated*

E In the instant judicial review application, the applicant, a former Assistant Superintendent of Police, sought to quash the decision of the Police Force Commission in finding him guilty of seven charges of misconduct under the Public Officers (Conduct and Discipline) Regulations 1993 ('the Regulations') and in dismissing him from the force. Prior to his dismissal, the applicant was stationed at the Manjung district police headquarters in Perak, where he was once head of public order as well as the district traffic chief. On 10 October

F 2019, the applicant received a show-cause letter to respond to seven charges of misconduct in respect of which disciplinary action had been commenced against him under the Regulations. The first charge was for insubordination for failing to report to the Chief Police Officer of Perak ('the CPO') on every Monday and Thursday from 3 February 2014 to 10 March 2014 as required by

G the terms of an interdiction order issued against him by the Inspector-General of Police ('IGP') under s 78(1) of the Police Act 1967. The second charge was for failing to report to the CPO from 20 March 2014 until 10 October 2019. The third to the seventh charges were for being absent from duty without leave or without prior permission or without reasonable cause for the whole of 2015,

H 2016, 2017, 2018 and 2019 until the date of the show-cause letter. The applicant denied all the charges. According to the background facts, the applicant, in August 2013, applied to be transferred out of the Manjung district police headquarters ('IPD Manjung'). The following month, he received a transfer order to report for duty at a new posting in Sarawak. The

I applicant did not obey the order but appealed against it. Whilst his appeal was pending, the applicant's duties at IPD Manjung was taken over by a new officer ('ASP Ganesan') who was transferred there on the presumption that the applicant would have left Manjung to take up his Sarawak posting. Some months later, the applicant's appeal was dismissed and he was given a new date

to report for duty at his Sarawak posting. When the applicant again disobeyed the transfer order, the IGP interdicted the applicant under the Police Act and required him to report to the CPO every Monday and Thursday of the week. The applicant's failure to comply with this requirement was the subject-matter of the first and second charges. The IGP subsequently revoked the interdiction order on the ground that it could not be served on the applicant as he never reported for duty. In his judicial review application, the applicant contended, *inter alia*, that: (a) the IGP acted *mala fide* in transferring ASP Ganesan to IPD Manjung to take over the applicant's duties when the appeal against his transfer order was still pending; and (b) the misconduct charges were defective as the matters stated therein were incorrect.

Held, allowing the judicial review application and ordering the applicant to be compensated in the terms sought:

- (1) The law with regard to transfer orders in the civil service was trite. A civil servant must obey a transfer order even if an appeal against it was made. Failure to obey was an act of insubordination. There was no rule or law that entitled a police officer on a transfer order not to report for duty at his new posting and which entitled him to remain in his old post until his appeal against the transfer was heard. An appeal against a transfer order was merely an administrative indulgence granted to a civil servant. There was no right of appeal against transfer orders and if an appeal was made it did not automatically result in a stay of the transfer order (see paras 24–27).
- (2) In the instant case, on the day the applicant's transfer order took effect, he no longer held his former post at IPD Manjung as he was supposed to report for duty at his new posting in Sarawak. But he failed to do so. In the circumstances, and on the law on transfers with regard to civil servants, the applicant's allegation of *mala fide* on the part of the IGP was unsupported, baseless and devoid of merit. The contention was accordingly dismissed (see para 28).
- (3) The first misconduct charge against the applicant was baseless because the interdiction order against him was revoked by the IGP on the ground that the order could not be served on him. This effectively demolished the misconduct stated in the first charge (see paras 31–32).
- (4) With regard to the second charge, the notice of revocation of the interdiction order required the applicant to assume his duties immediately but it was not stated where he was to report for duty. The charge was therefore lacking in material particulars. The charge also stated that the misconduct committed was a violation of reg 24 of the Regulations which concerned absence from duty without leave or without prior permission or without reasonable cause. The procedure for dealing with cases concerning 'absence from duty without leave' under

- A reg 24 was specifically provided for in reg 25 read with reg 26 of the Regulations. In the instant case, that procedure was not followed and the failure was fatal. The failure to follow the procedure as aforesaid similarly rendered the misconduct stated in the third to the seventh charges against the applicant baseless. Additionally, the third to seventh charges were defective for stating that the applicant was at the material time holding the posts of Head of Public Order and District Traffic Chief at IPD Manjung when those posts had already been taken over by ASP Ganesan (see paras 33–42).
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- C (5) For all the above reasons, the decision to dismiss the applicant on the misconduct charges was tainted with illegality or procedural impropriety, as the case might be, and was unlawful and null and void (see paras 32, 37 & 41).
- D **[Bahasa Malaysia summary]**
Dalam permohonan semakan kehakiman semasa, pemohon, bekas Penolong Penguasa Polis, memohon untuk membatalkan keputusan Suruhanjaya Pasukan Polis dalam mendapati beliau bersalah atas tujuh pertuduhan salah laku di bawah Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 ('Peraturan tersebut') dan dalam memecatnya daripada tugas. Sebelum dipecat, pemohon ditempatkan di ibu pejabat polis daerah Manjung di Perak, di mana beliau pernah menjadi ketua ketenteraman awam serta ketua trafik daerah. Pada 10 Oktober 2019, pemohon menerima surat tunjuk sebab untuk menjawab tujuh pertuduhan salah laku yang mana tindakan tatatertib telah dimulakan terhadapnya di bawah Peraturan tersebut. Pertuduhan pertama adalah kerana ingkar dengan gagal melaporkan diri kepada Ketua Polis Perak ('KPP') pada setiap Isnin dan Khamis dari 3 Februari 2014 hingga 10 Mac 2014 seperti yang dikehendaki oleh terma perintah tahan kerja yang dikeluarkan terhadapnya oleh Ketua Polis Negara ('KPN') di bawah s 78(1) Akta Polis 1967. Pertuduhan kedua adalah gagal melaporkan diri kepada KPP dari 20 Mac 2014 hingga 10 Oktober 2019. Pertuduhan ketiga hingga ketujuh adalah untuk tidak hadir bertugas tanpa cuti atau tanpa kebenaran terlebih dahulu atau tanpa sebab yang munasabah sepanjang tahun 2015, 2016, 2017, 2018 dan 2019 sehingga tarikh surat tunjuk sebab. Pemohon menafikan semua pertuduhan. Mengikut fakta latar belakang, pemohon, pada Ogos 2013, memohon untuk ditukarkan dari Ibu Pejabat Polis Daerah Manjung ('IPD Manjung'). Pada bulan berikutnya, beliau menerima perintah pertukaran untuk melaporkan diri di penempatan baharu di Sarawak. Pemohon tidak mematuhi perintah tersebut tetapi merayu terhadapnya. Sementara rayuannya belum selesai, tugas pemohon di IPD Manjung telah diambil alih oleh pegawai baharu ('ASP Ganesan') yang ditukarkan ke sana atas anggapan bahawa pemohon akan meninggalkan Manjung untuk bertugas di Sarawak. Beberapa bulan kemudian, rayuan pemohon telah ditolak dan beliau diberi tarikh baharu untuk melaporkan diri di Sarawak. Apabila pemohon sekali lagi
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mengingkari perintah pertukaran tersebut, KPN menahan kerja pemohon di bawah Akta Polis dan memerintahkan beliau melaporkan kepada CPO setiap Isnin dan Khamis dalam seminggu. Kegagalan pemohon untuk mematuhi keperluan ini adalah perkara pertuduhan pertama dan kedua. KPN kemudiannya membatalkan perintah tahan kerja tersebut atas alasan ia tidak boleh disampaikan kepada pemohon kerana beliau tidak pernah melaporkan diri untuk bertugas. Dalam permohonan semakan kehakimannya, pemohon berpendapat, antara lain, bahawa: (i) KPN bertindak mala fide dalam menukarkan ASP Ganesan ke IPD Manjung untuk mengambil alih tugas pemohon apabila rayuan terhadap perintah pertukaran beliau masih belum selesai; dan (ii) pertuduhan salah laku adalah cacat kerana perkara yang dinyatakan di dalamnya adalah tidak betul.

Diputuskan, membenarkan permohonan semakan kehakiman dan memerintahkan pemohon diberi pampasan mengikut syarat yang diminta:

- (1) Undang-undang berkenaan dengan perintah pertukaran dalam perkhidmatan awam telah lama dibuktikan. Penjawat awam mesti mematuhi perintah pertukaran walaupun rayuan terhadapnya dibuat. Kegagalan untuk mematuhi adalah tindakan ketidakpatuhan. Tiada peraturan atau undang-undang yang membenarkan pegawai polis atas perintah pertukaran untuk tidak melaporkan diri di jawatan baharunya dan yang membenarkannya untuk kekal di jawatan lamanya sehingga rayuannya terhadap pertukaran tersebut didengar. Rayuan terhadap perintah pertukaran adalah semata-mata budi bicara pentadbiran yang diberikan kepada penjawat awam. Tiada hak untuk merayu terhadap perintah pertukaran dan jika rayuan dibuat, ia tidak secara automatik menyebabkan perintah pertukaran tersebut ditangguhkan (lihat perenggan 24–27).
- (2) Dalam kes semasa, pada hari perintah pertukaran pemohon berkuat kuasa, beliau tidak lagi memegang jawatan lamanya di IPD Manjung kerana beliau sepatutnya melaporkan diri di jawatan baharunya di Sarawak. Tetapi beliau gagal berbuat demikian. Dalam keadaan tersebut, dan mengenai undang-undang pertukaran berkaitan dengan penjawat awam, dakwaan pemohon terhadap mala fide di pihak KPN adalah tidak disokong, tidak berasas dan tidak mempunyai merit. Pendapat tersebut ditolak dengan sewajarnya (lihat perenggan 28).
- (3) Pertuduhan salah laku pertama terhadap pemohon adalah tidak berasas kerana perintah tahan kerja terhadapnya telah dibatalkan oleh KPN atas alasan bahawa perintah tersebut tidak dapat disampaikan kepadanya. Ini secara berkesan menghapuskan salah laku yang dinyatakan dalam pertuduhan pertama (lihat perenggan 31–32).
- (4) Berkenaan dengan pertuduhan kedua, notis pembatalan perintah tahan kerja tersebut mengkehendaki pemohon untuk bertugas semula dengan

- A** serta-merta tetapi tidak dinyatakan di mana beliau perlu melaporkan diri. Oleh itu pertuduhan tersebut tidak mempunyai butiran material. Pertuduhan tersebut juga menyatakan bahawa salah laku yang dilakukan adalah melanggar peraturan 24 Peraturan tersebut yang melibatkan ketidakhadiran bertugas tanpa cuti atau tanpa kebenaran terlebih dahulu
- B** atau tanpa sebab yang munasabah. Prosedur untuk menangani kes-kes berkenaan 'tidak hadir bertugas tanpa cuti' di bawah peraturan 24 diperuntukkan secara khusus dalam peraturan 25 yang dibaca bersama peraturan 26 Peraturan tersebut. Dalam kes semasa, prosedur tersebut tidak dipatuhi dan kegagalan tersebut adalah memudaratkan. Kegagalan
- C** untuk mematuhi prosedur seperti yang dinyatakan di atas juga menyebabkan salah laku yang dinyatakan dalam pertuduhan ketiga hingga ketujuh terhadap pemohon tidak berasas. Tambahan lagi, pertuduhan ketiga hingga ketujuh adalah cacat dalam menyatakan
- D** bahawa pemohon pada masa yang penting memegang jawatan Ketua Ketenteraman Awam dan Ketua Trafik Daerah di IPD Manjung apabila jawatan tersebut telah diambil alih oleh ASP Ganesan (lihat perenggan 33–42).
- E** (5) Atas kesemua sebab di atas, keputusan untuk memecat pemohon atas tuduhan salah laku telah dicemari dengan kesalahan undang-undang atau ketidakwajaran prosedur, mana-mana yang berkenaan, dan adalah menyalahi undang-undang serta terbatal dan tidak sah (lihat perenggan 32, 37 & 41).]
- F** **Cases referred to**
R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145; [1997] 1 CLJ 147, FC (refd)
Pengarah Pelajaran, Wilayah Persekutuan & Ors v Loot Ting Yee [1982] 1 MLJ 68, FC (refd)
- G** *Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd* [2010] 6 MLJ 1; [2010] 8 CLJ 629, FC (refd)
- Legislation referred to**
- H** Police Act 1967 s 78(1), (3)
 Public Officers (Conduct and Discipline) Regulations 1993 regs 23, 24, 25, 26, 37, 38(g)
 Rules of Court 2012 O 53
- I** *Muhammad Noor Azfar bin Noor Azmi (Shaharudin Ali Azfarazmi & Co) for the applicant.*
Nur Irmawatie bt Daud (Senior Federal Counsel, Attorney General's Chambers) for the respondents.

Amarjeet Singh J:

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INTRODUCTION

[1] On 31 March 2023, I allowed an application for judicial review commenced by the applicant, Kamaruddin bin Sharif for an order of certiorari to quash the decision of the Police Force Commission dated 21 May 2020 which found him guilty of seven misconducts and imposed the punishment of dismissal for each of the said misconducts pursuant to reg 38(g) of the Public Officers (Conduct and Discipline) Regulations 1993 ('1993 Regulations' and 'the impugned decision').

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[2] This judgment contains the full reasons for my decision.

THE JUDICIAL REVIEW APPLICATION

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[3] The applicant prior to his dismissal was an Assistant Superintendent of Police ('ASP') with the Royal Malaysian Police ('RMP') stationed at Ibu Pejabat Polis Daerah Manjung ('IPD Manjung') holding the post of Ketua Bahagian Ketenteraman Awam/Ketua Trafik Daerah IPD Manjung. He received a letter dated 10 October 2019 informing him that the Police Force Commission had found a prima facie case on seven misconducts and that disciplinary action was being taken against him with a view of dismissal or reduction of rank under reg 37 of the 1993 Regulations. The seven misconducts were in the form of charges which can be summarised as follows:

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(a) first charge:

insubordination under reg 4(2)(i) of the 1993 Regulations. The applicant while stationed at IPD Manjung holding the post of *Ketua Bahagian Ketenteraman Awam/Ketua Trafik Daerah Manjung* committed insubordination by failing to report to the Chief Police Officer of Perak ('CPO Perak') each Monday and Thursday from 3 February 2014 to 10 March 2014 while interdicted under an interdiction order under s 78(1) of the Police Act 1967.

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(b) second charge:

acted irresponsibly in breach of reg 4(2)(g) read with Regulation 24 of the 1993 Regulations. The applicant while stationed at IPD Manjung holding the post of Ketua Bahagian Ketenteraman Awam/Ketua Trafik Daerah had acted irresponsibly by failing to report to the CPO Perak from 20 March 2014 to date upon the interdiction order being cancelled on 11 March 2014.

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(c) third charge:

acted irresponsibly in breach of reg 4(2)(g) read with Regulation 24 of the 1993 Regulations. The applicant while stationed at IPD Manjung

- A** holding the post of Ketua Bahagian Ketenteraman Awam/Ketua Trafik Daerah had acted irresponsibly by being absent from duty without leave or without prior permission or without reasonable cause from 1 January 2015 to 31 December 2015.
- B** (d) fourth charge:
acted irresponsibly in breach of reg 4(2)(g) read with Regulation 24 of the 1993 Regulations. The applicant while stationed at IPD Manjung holding the post of Ketua Bahagian Ketenteraman Awam/Ketua Trafik Daerah had acted irresponsibly by being absent from duty without leave or without prior permission or without reasonable cause from 1 January 2016 to 31 December 2016.
- C**
- (e) fifth charge:
acted irresponsibly in breach of reg 4(2)(g) read with Regulation 24 of the 1993 Regulations. The applicant while stationed at IPD Manjung holding the post of Ketua Bahagian Ketenteraman Awam/Ketua Trafik Daerah had acted irresponsibly by being absent from duty without leave or without prior permission or without reasonable cause from 1 January 2017 to 31 December 2017.
- D**
- E** (f) sixth charge:
acted irresponsibly in breach of reg 4(2)(g) read with Regulation 24 of the 1993 Regulations. The applicant while stationed at IPD Manjung holding the post of Ketua Bahagian Ketenteraman Awam/Ketua Trafik Daerah had acted irresponsibly by being absent from duty without leave or without prior permission or without reasonable cause from 1 January 2018 to 31 December 2018.
- F**
- (g) seventh charge:
acted irresponsibly in breach of reg 4(2)(g) read with Regulation 24 of the 1993 Regulations. The applicant while stationed at IPD Manjung holding the post of Ketua Bahagian Ketenteraman Awam/Ketua Trafik Daerah had acted irresponsibly by being absent from duty without leave or without prior permission or without reasonable cause from 1 January 2019 to date, which would be 10 October 2019 (the date of the show cause letter).
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- I** [4] The applicant was requested to make written representation to exculpate himself from the said charges. In his written representation, the applicant denied all the charges and said that he was not holding the post of Ketua Bahagian Ketenteraman Awam/Ketua Trafik Daerah at IPD Manjung on the dates referred to in all the said charges, and he did not receive the cancellation of the interdiction order dated 11 March 2014 and that at all material times, he was awaiting the response to his various letters to the RMP

and Police Force Commission on his status as a police officer in an attempt to exculpate himself from the said charges.

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[5] In a letter received on 17 July 2020, the applicant was informed of the impugned decision made by the Police Force Commission on 21 May 2020 which found him guilty of each misconduct and the punishment of dismissal for each misconduct. On 26 October 2020, the applicant filed this instant application for judicial review challenging the impugned decision.

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[6] In the O 53 statement, the applicant raised several grounds to challenge the decision of the Police Force Commission. I found the grounds irrelevant except for the following grounds on the premise that what was being challenged was the alleged misconduct of insubordination:

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- (a) the decision of the disciplinary authority is irrational in that the applicant's appeal against the transfer order was not determined and therefore the decision was made mala fide; and
- (b) the facts in the charges are not correct and therefore the charges are defective and cannot be sustained against the applicant.

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BACKGROUND FACTS

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[7] The applicant began his narrative stating that on 19 August 2013, he applied for a transfer from his post at IPD Manjung on the basis that he could not work with the Officer in Charge of the Police District ('OCPD') and Deputy OCPD. On 5 September 2013, the applicant received a transfer order directing him to report as Company Commander, 12th Battalion, PGA, Miri, Sarawak immediately ('first transfer order'). The said order was issued under the hand of the Inspector General of Police ('IGP') himself.

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[8] The applicant, did not obey the said transfer order and instead on 18 September 2013 appealed against the same. In the meantime, a transfer order was issued on 6 November 2013 directing one ASP Ganesan a/l Chinapan from the second Battalion, PGA Kulim to fill the post that was vacated by the applicant. ASP Ganesan reported for duty on 15 November 2013. A handing over ceremony was held on 18 September 2013 for ASP Ganesan. Thus, effectively, ASP Ganesan had taken over the post vacated by the transfer of the applicant. The applicant expressed his shock over the fact that his post in IPD Manjung was filled up by another police officer while his appeal was still pending and made this one of his grounds to challenge the impugned decision.

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[9] It was months later ie on 14 November 2013 that the IGP rejected the applicant's appeal and fixed a new reporting date ie 16 December 2013 ('the

A new reporting date') for the applicant to report for duty at 12th Battalion, PGA, Miri, Sarawak. This decision was stated in a letter dated 11 December 2013 addressed to the applicant at his residential address at No 48, Jalan Celana 10/13, 71300 Shah Alam. The letter was allegedly sent by *Pos Laju* courier service to the said address.

B [10] The applicant did not report for duty on the new reporting date at 12th Battalion, PGA, Miri, Sarawak as ordered by the IGP.

C [11] On 7 January 2014, the IGP issued an order interdicting the applicant under s 78(1) and (3) of the Police Act 1967. The interdiction order was said to have been sent to the applicant's residential address at No 48, Jalan Celana 10/13, 71700 Shah Alam, Selangor which was the address given by the applicant in the Human Resources Management Information System ('HRMIS'). HRMIS is an application system that covers all aspects of human resource management of civil servants. The interdiction order came with several conditions and the one that matters in the instant proceedings is in the following terms:

E to report to the CPO Perak on each Monday and Thursday of every week of the month.

F [12] The applicant did not report to the CPO Perak as required by the interdiction order. The failure, as it would become apparent, became the basis of the first and second charges of misconduct against the applicant.

G [13] On 23 January 2014, the IGP revoked the first transfer order and directed the applicant to report at the Administrative Division, IPK Perak ('second transfer order'). This transfer order was published at the e-Siar Portal of the RMP. It was said that police officers who are still serving in the RMP have access to this portal. The transfer order came with the following endorsement:

LAPOR DIRI SERTA MERTA TANPA GAGAL UNTUK PENYELERASAN
DALAM APLIKASI SYSTEM PETUKARAN HRMIS PDRM.

H [14] On 11 March 2014, the IGP revoked the interdiction order on the basis that the same could not be served on the applicant for the reason that he did not present himself for work without leave or with the permission of his head of department. The revocation of the interdiction order is now reproduced which state as follows:

I *PEMBATALAN PERINTAH TAHANAN*

Surat Perintah Tahan Kerja terhadap anda Rujukan: (PR) I/5069 bertarikh 07 January 2014

2. *Satu laporan telah diterima oleh saya IG TAN SRI DATO' SRI KHALID BIN ABU BAKAR, KETUA POLIS NEGARA bahawa Perintah Tahan Kerja tersebut*

- telah tidak dapat diserahkan kepada anda* ekoran ketidakhadiran anda bertugas tanpa cuti atau tanpa terlebih dahulu mendapat kebenaran daripada Ketua Jabatan atau tanpa sebab yang munasabah di Bahagian Pentadbiran, Ibu Pejabat Polis Kontinjen Perak sehingga sekarang. Anda juga tidak melaporkan pergerakan anda kepada Ketua Polis Perak. A
3. Pada menjalankan kuasa-kuasa tatatertib yang telah diwakilkan oleh Suruhanjaya Pasukan Polis melalui Surat Cara Perwakilan Fungsi-Fungsi, Kuasa-Kuasa, Tugas-Tugas dan Tanggungjawab-Tanggungjawab Tertentu di bawah P.U.(B) 441/2000 bertarikh 14 Disember 2000, saya IG TAN SRI DATO' SRI KHALID BIN ABU BAKAR, KETUA POLIS NEGARA, dengan ini membatalkan Perintah Tahan Kerja terhadap anda berkuatkuasa pada tarikh surat ini dikeluarkan. B
4. Dengan Pembatalan Perintah Tahan Kerja ini anda dikehendaki hadir menjalankan tugas anda dengan serta merta, dan sekiranya anda masih tidak hadir bertugas tanpa sebab yang munasabah, maka anda tidak berhak mendapat apa-apa gaji atau lain-lain emolumen bagi tempoh ketidakhadiran tersebut mengikut Peraturan 14A(a) Perintah Am Bab C. C
5. Walaupun Perintah Tahan Kerja ini dibatalkan, prosiding tatatertib terhadap anda akan tetap diteruskan mengikut peraturan yang sedang berkuatkuasa berhubung dengan (PR) KPN/KST 6/2013/9 (PK). (Emphasis added.) D
- [15] The applicant denied receiving the said revocation of interdiction order and the second transfer order. As such the applicant said that due to absence of knowledge he did not report for duty. On 30 May 2014, another transfer order was issued transferring the applicant from *Jawatan Tambahsentara Kontinjensi* to *Sandaran Jawatan Tambahsentara Kontinjensi* still at *Bahagian Pentadbiran* IPK, Perak ('the third transfer order'). The applicant also denied receiving the third transfer order. E
- [16] On 9 February 2015, one year after the interdiction order was revoked, the applicant in a letter to the Secretary of the Police Force Commission, asked the status of his position in the RMP. This letter was followed by a letter dated 24 February 2016 to the Deputy Prime Minister and three letters dated 5 September 2017, 8 October 2018 and 10 December 2018 respectively addressed to the Secretary of the Police Force Commission. In all these letters, the applicant was asking his status in the RMP and had stated his address as No 48, Jalan Celana 10/13, 40100 Shah Alam, Selangor. F
- [17] In a letter dated 8 April 2015, the Secretary of the Police Force Commission responded to the applicant's letter dated 9 February 2015 that the matter raised by the applicant was under review by the legal advisor of the Ministry of Home Affairs. After a couple of years, in a letter dated 11 September 2017, the Secretary of the Police Force Commission referring the applicant's letter dated 5 September 2017 stated that the matter was under the action of the Jabatan Integriti dan Pematuhan Standard. G
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- A [18] There the matter stood until disciplinary action was commenced against the applicant by the Police Force Commission.

GOVERNING PRINCIPLES ON JUDICIAL REVIEW

- B [19] In judicial review proceedings, the High Court is not exercising appellate jurisdiction but supervisory jurisdiction. In regard to dismissal cases carried out under the 1993 Regulations (and its predecessor legislations), it is settled law that the High Court is entitled to review the decision on the established grounds of procedural impropriety, illegality and irrationality. As to what these grounds entail is so well established to require repetition here. The ground of mala fide is a stand-alone ground which if proven would strike down a decision.
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- D [20] The grounds of illegality and irrationality, if applicable in a given case, permits the court to review the decision for substance. The review of an impugned decision for substance allows the court to delve into and probe the merit of the case to see if the decision-maker has committed an error of law. It is settled law that a decision will be struck down if an error of law is disclosed.
- E An error of law is disclosed if the decision-maker: (i) asks himself the wrong question; (ii) commits a 'wednesbury unreasonableness' error ie takes into account irrelevant considerations or omits to take into account relevant considerations; (iii) misconstrues the provision of any relevant statute; (iv) or misapplies or mis-states a principle of the general law. The decision would also
- F be struck down if it is an absurd or perverted decision which no reasonable disciplinary tribunal similarly circumstanced could have reached it but to prove a case of this kind would require something overwhelming *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145; [1997] 1 CLJ 147 and *Ranjit Kaur alp S Gopal Singh v Hotel Excelsior (M) Sdn Bhd* [2010] 6 MLJ 1; [2010] 8 CLJ 629).
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DECISION OF THE COURT

- H [21] As stated above, I will only deal with two grounds as I found the allegation of failure to be accorded the right to be heard of no basis whatsoever as the applicant was duly accorded the right to be heard as provided in the 1993 Regulations before the impugned decision was made. The two grounds are dealt with under the headings below.

- I *Mala fide: Appeal against transfer order not determined*

[22] The applicant's case was that the IGP had acted mala fide in transferring ASP Ganesan a/l Chinapan to take up his post at IPD Manjung when his appeal against the first transfer order was yet to be decided by the IGP.

According to the applicant, the act of transferring ASP Ganesan a/l Chinapan to take up his post at IPD Manjung created confusion and made his status in IPD Manjung uncertain as there could not be overlapping of the same post or two persons holding the same post at IPD Manjung. Matters were made worse by a handing over ceremony of the duties to ASP Ganesan a/l Chinapan and a direction barring the applicant from entering his office to do his job as Ketua Bahagian Ketenteraman Awam/Ketua Trafik Daerah. It was contended by the applicant that ASP Ganesan a/l Chinapan's transfer order to the said post was an unlawful act of removing the applicant from his post. As a result of these unlawful acts, allegations of misconduct were raised against the applicant which resulted in his dismissal.

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[23] However, the applicant did not refer to or identify any rule or regulation or circular which said that in instances of an appeal against a transfer order a corresponding transfer order, in the instant case ASP Ganesan a/l Chinapan's transfer order, could not be made. The applicant's contention is a bare assertion that the said transfer order was not proper or an unlawful act.

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[24] The law in regard to transfer orders in the civil service is trite. Employment in the civil service is at the pleasure of the Yang di-Pertuan Agong. It is the Government that decides on the transfer of civil servants and the courts do not question whether the transfer is reasonable or not. To interfere with transfer orders would be an usurpation of the Government's function. A civil servant must obey the instructions issued on transfers and failure to do so would be an act of insubordination (see *Pengarah Pelajaran, Wilayah Persekutuan & Ors v Loot Ting Yee* [1982] 1 MLJ 68).

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[25] More so transfer orders that concern a uniform body as the police force. A transfer order must be obeyed and there is no rule or law that has been shown to me that entitles a police officer on a transfer order not to report for duty and that such officer is entitled to remain in his post until his appeal against the transfer is heard. An appeal against a transfer order is merely an administrative indulgence granted to civil servants. In other words, there is no right of appeal against transfer orders.

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[26] A civil servant must report for duty in accordance with the transfer order unless before the date an officer is required to report for duty, there is a deferment of the date of transfer or change in the transfer order upon request. If there is none, the failure to report is, for the sake of repetition, an act of insubordination. In such situations it is incumbent on the head of department to take the necessary action against the officer who fails to report for duty.

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[27] The allegation of the applicant that he is still holding the post in IPD Manjung is a fallacy and misconceived in law. If police officers were to behave

A as the applicant did — it would bring nothing but chaos to the police force which is a disciplined force. The applicant's appeal against an order of transfer does not absolve the applicant from complying with the transfer order and to report for duty as ordered. In other words, an appeal against a transfer order does not automatically result in the stay of that order.

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C [28] In the circumstances, as of 5 September 2013, the day the transfer order took effect, the applicant was no longer holding the post he held or attached to IPD Manjung and was to report for duty as Company Commander, 12th Battalion, PGA, Miri, Sarawak. But report for duty he did not do. In these circumstances and on the law on transfers with regard to civil servants, the applicant's allegation of mala fide on part of the IGP is unsupported, baseless and completely devoid of merit. The contention is accordingly dismissed.

D [29] In cases where there is an appeal against a transfer order, such appeal must be dealt with as soon as may be by the head of department. In cases such as the present one, the head of department where the civil servant was to report must immediately inform the authority which issued the transfer order of the failure by such civil servant to report for duty and act accordingly. This is necessary so that all concerned ensure that public funds are not wasted due to lack of empathy in taking the necessary action as happened in the case before me.

Defective charges: First and second charges

F [30] I found the first and second charges defective for the following reasons.

G [31] The basis of the first charge was that the applicant failed to report to the CPO Perak each Monday and Thursday from 3 February 2014 to 10 March 2014 while interdicted under an interdiction order issued under s 78(1) of the Police Act 1967. The charge was clearly without basis given the fact that the IGP himself in the revocation of the interdiction order dated 11 March 2014 said (see para [14] above):

H 2. Satu laporan telah diterima oleh saya IG TAN SRI DATO' SRI KHALID BIN ABU BAKAR, KETUA POLIS NEGARA *bahawa Perintah Tahan Kerja tersebut telah tidak dapat diserahkan kepada anda ekoran ketidakhadiran anda bertugas tanpa cuti atau tanpa terlebih dahulu mendapat kebenaran daripada Ketua Jabatan* atau tanpa sebab yang munasabah di Bahagian Pentadbiran, Ibu Pejabat Polis Kontinjen Perak sehingga sekarang. Anda juga tidak melaporkan pergerakan anda kepada
I Ketua Polis Perak.

[32] The underlined words clearly show that the interdiction order could not be served on the applicant. This admission of the IGP based on a report he had received would effectively demolish the misconduct stated in the first charge.

For the above reason, the decision to dismiss the applicant on the first charge is tainted with illegality and rendered unlawful, null and void.

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[33] The basis of the second charge was that the applicant failed to report to the CPO Perak from 20 March 2014 to the date of the show cause letter ie 10 October 2019 as stated in the revocation of the interdiction order. The relevant part of the revocation of the interdiction order (see para [14] above) at para 4 state that the applicant is required to assume his duties immediately but does not state where or the place he is to assume his duties. The charge is therefore lacking in material particulars.

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[34] Secondly, the charge states that the misconduct committed was a violation of reg 24 of the Regulations 1993 which read as follows:

An officer's absence from duty without leave or without prior permission or without reasonable cause shall render him liable to disciplinary action.

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and for the purposes of the above regulation the word 'absence' is defined in reg 23 to include 'a failure to be present for any length of time at a time and place where the officer is required to be present for the performance of his duties'.

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[35] I find that the procedure in respect of cases for 'absence from duty without leave' under reg 24 is specifically provided in reg 25 read with reg 26 of the 1993 Regulations. The procedure provided was not followed. Regulation 25 provides:

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- (1) Where an officer is absent from duty without leave or without prior permission or without reasonable cause, his Head of Department shall, as soon as possible, report that fact together with the dates and circumstances of such absence and any further information in respect of such absence to the appropriate Disciplinary Authority.
- (2) The appropriate Disciplinary Authority may, after considering the report of the Head of Department under subregulation (1), institute disciplinary action against the officer.

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While the relevant parts of reg 26 provide as follows:

- (1) *Where an officer is absent from duty without leave or without prior permission or without reasonable cause for seven consecutive working days and cannot be traced, his Head of Department shall cause a letter to be delivered personally or sent by A.R. registered post to the officer at his last known address, directing the officer to immediately report for duty.*
- (2) If, after the letter is delivered —
 - (a) the officer reports for duty; or

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- A** (b) *the officer fails to report for duty or no news is heard from him,* his Head of Department shall submit a report to the appropriate Disciplinary Authority and the Disciplinary Authority shall institute disciplinary action against the officer.
- B** (3) If the letter cannot be delivered in person to the officer by reason of the fact that he is no longer residing at his last-known address or if the A.R. registered letter is returned undelivered, the Head of Department shall report the matter to the Disciplinary Authority having the jurisdiction to impose a punishment of dismissal or reduction in rank upon the officer.
- C** (4) The appropriate Disciplinary Authority shall, upon *receiving the report referred to in subregulation (3) take steps to publish a notice in at least one daily newspaper published in the national language and having national circulation* as determined by the Disciplinary Authority —
- D** (a) of the fact that the officer has been absent from duty and cannot be traced; and
- (b) requiring the officer to report for duty within seven days from the date of such publication.
- E** (5) If the officer reports for duty within seven days from the date of publication of the notice referred to in subregulation (4), his Head of Department shall report the matter to the appropriate Disciplinary Authority and the Disciplinary Authority shall institute disciplinary proceedings against the officer.
- F** (6) If the officer fails to report for duty within seven days from the date of the publication of the notice referred to in subregulation (4), the officer shall be deemed to have been dismissed from the service with effect from the date he was absent from duty. (Emphasis added.)

G [36] So, it can be seen that the procedure provided in reg 25 read with reg 26 for the purposes of the misconduct provided in reg 24 of the 1993 Regulations was not complied with, namely: (i) causing a letter to be delivered personally or sent by AR registered post to the officer at his last-known address, directing the officer to immediately report for duty; (ii) where the officer fails to report for duty or no news is heard from him only then discipline action can be instituted against the officer; (iii) where the letter cannot be delivered by personal service or the AR registered letter is returned undelivered, a notice must be published in at least one daily newspaper in the national language and having national circulation of such absence and requiring the officer to report for duty within seven days from the date of such publication. Only if after such publication of

H such notice the officer fails to report for duty is the officer deemed dismissed from service with effect from the date he was absent from duty.

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[37] There was a complete failure to comply with the procedure in regs 25 and 26 of the 1993 Regulations. The non-compliance to utilise the procedure

provided for the purpose of a misconduct under reg 24 of the 1993 Regulations is fatal. For the above reason, the decision to dismiss the applicant on the second charge is tainted by procedural impropriety and therefore rendered unlawful, null and void.

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Defective charges: Third to seventh charges

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[38] I found the third to seventh charges defective for the following reasons.

[39] The basis of the third to seventh charges were that the applicant was absent without leave or without prior permission or without reasonable cause for nearly five years (the charges are for the years 2015, 2016, 2017, 2018 and 2019 respectively). More importantly, the charges expressly state that the misconduct committed was a violation of reg 24 of the 1993 Regulations while holding the post of Ketua Bahagian Ketenteraman Awam/Ketua Trafik Daerah IPD Manjung.

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[40] As shown above, the procedure in respect of cases for 'absence from duty without leave' under reg 24 is specifically provided in reg 25 read with reg 26 of the 1993 Regulations. The procedure provided was not followed.

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[41] There was again a complete failure to comply with the procedure in regs 25 and 26 of the 1993 Regulations. The non-compliance to utilise the procedure provided for the purpose of a misconduct under reg 24 of the 1993 Regulations is fatal as explained above. For the above reason, the decision to dismiss the applicant on the third to seventh charges are tainted by procedural impropriety and therefore rendered unlawful, null and void.

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[42] The charge is also defective as the applicant was not holding the post of Ketua Bahagian Ketenteraman Awam/Ketua Trafik Daerah IPD Manjung at the material time. That post was held by ASP Ganesan a/l Chinapan. A defective charge would render the dismissals null and void and I so hold.

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CONCLUSION

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[43] For the above reasons I allowed the application and made an order of compensation in the terms sought by the applicant.

Application allowed.

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Reported by Ashok Kumar